IN THE

Supreme Court of the United States

October Term, 1962.

No. 509.

ELIJAH REED,

Petitioner,

v.

STEAMSHIP YAKA, Her Engines, Boilers, Machinery, Etc. (Waterman Steamship Corporation, Owner and Claimant)

and

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT STEAMSHIP YAKA.

THOMAS F. MOUNT,
HARRISON G. KILDARE,
1910 Packard Building,
Philadelphia 2, Pa.,
Counsel for Respondent, Steamship Yaka.

International, 711 So. 50th St., Phila. 43, Pa.

TABLE OF CONTENTS.

TABLE OF CASES CITED.

STATUTE CITED.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1962.

No. 509

ELIJAH REED,

Petitioner

v.

STEAMSHIP YAKA, HER ENGINES, BOILERS, MACHINERY, ETC. (WATERMAN STEAMSHIP CORPORATION, OWNER AND CLAIMANT),

AND

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondents.

BRIEF FOR RESPONDENT STEAMSHIP YAKA.

QUESTION PRESENTED FOR REVIEW.

May a vessel be held liable in rem for damages arising from shipboard injury to a longshoreman, caused by an unseaworthy condition created by the demise charterer who is also the longshoreman's employer?

STATEMENT OF THE CASE.

Steamship YAKA, owned by Waterman Steamship Corporation, was delivered under a demise charter to Pan-Atlantic Steamship Corporation on March 19, 1956. Petitioner was injured on March 23, 1956, while employed by the demisee to load cargo aboard the ship at Philadelphia.

The trial judge found that the accident occurred because of the defective condition of a pallet which Pan-Atlantic's longshoremen were using as a platform in the hold to expedite their work. The pallet was not part of the regular equipment of the vessel. It had not been aboard the vessel when the ship was delivered to the demise charterer six days previously. On the contrary, the evidence was undisputed that the wooden pallet was a loading device owned and furnished by the demisee, and used to transfer drafts of cargo from shore into the hold of the vessel on the day of the accident.

Petitioner sued Waterman Steamship Corporation as owner, alleging that the duty to furnish a seaworthy ship and equipment was absolute and non-delegable, even where the unseaworthy condition was created by the demisee and did not exist at the time of the demise. This contention was rejected by the District Court on peremptory exception to the libel, but the exception was dismissed on the ground that evidence might be presented at trial to disclose some connection between the shipowner and the faulty equipment.

Petitioner thereupon instituted the present action in rem against the vessel, which impleaded the demise charterer. The suit in personam and the separate action in rem were consolidated for purposes of trial, and at the close of the testimony the trial judge granted the motion of Waterman Steamship Corporation for dismissal of the in personam suit since it was clear that the unseaworthy condition had been created entirely by Pan-Atlantic Steamship Corporation.

Thus recognizing that there was no in personam liability on the part of Waterman as shipowner, the trial judge nevertheless found Steamship YAKA liable in rem and allowed full indemnity in favor of the ship against the demisee.[1]

Pan-Atlantic appealed on the ground that its status as demise charterer was tantamount to ownership (see *Guzman v. Pichirilo*, 369 U. S. 698 (1962)) and that the fiction of an independent in rem liability could not be utilized to circumvent the protection afforded a stevedore employer by the Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. Code, Section 901 et seq. The Third Circuit had already decided that the registered owner of a vessel who performed his own stevedoring could not be deprived of this protection by the device of attaching his vessel on the theory of a maritime lien. *Smith v. The Mormacdale*, 198 F. 2d 849 (C. A. 3, 1952), certiorari denied 345 U. S. 908 (1953).

Steamship YAKA likewise appealed to protect its position on the separate judgment for indemnity.

The Court below reversed the District Court, holding that petitioner had attempted to use the procedural device of a libel in rem against a ship for injury in the absence of "any underlying obligation of anyone" to respond in damages.

Although in either event Steamship YAKA will not be required to bear the loss, it is the position of this respondent that the conclusion of the Court below was correct as a matter of law, and that this petition for writ of certiorari should be denied.

---

1. The demise charter expressly provided for indemnity, in addition to the established breach of Pan-Atlantic's implied warranty to the owner to perform its services in a safe, proper and workmanlike manner. *Crumady v. J. H. Fisser*, 358 U. S. 423 (1959); *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corporation*, 350 U. S. 124 (1956).

ARGUMENT.

I. There Is No Conflict With the Prior Decisions of This Court, or With the Most Recent Decisions in Other Circuits.

Petitioner's assertion that the decision of the Court below conflicts with prior decisions of this Court, and with other decisions in the Second Circuit, is untenable.

Plamals v. S. S. Pinar del Rio, 277 U. S. 151 (1928), decided no more than the inapplicability of in rem proceedings to litigation arising under the Jones Act, which it was held did not create a maritime lien in favor of an injured seaman such as existed under general maritime law. The maritime lien "cannot be extended by construction, analogy, or inference."

The decision confirms the admiralty doctrine that in rem proceedings are predicated on the existence of a maritime lien. But it does not follow that a maritime lien exists in the absence of in personam liability of the shipowner.

The Court below in the present case disposes of that open question by holding that a maritime lien is essentially a means of enforcing in personam liability against the owner or other person responsible for the operation of a vessel, a question which this Court did not reach in *Guzman v. Pichirilo,* 369 U. S. 698, 700 (1962).

In *Seas Shipping Co., Inc., v. Sieracki,* 328 U. S. 85 (1946), this Court held that the rights of a seaman against his maritime employer under general maritime law were extended to longshoremen while engaged in performing the traditional duties of crew members. This suit was on the "law side" of the court and did not involve, nor did it discuss, maritime liens or proceedings in rem.

Petitioner also relies on the conflict, admitted by the Court below, with the opinion of Judge Learned Hand in *Grillea v. United States,* 232 F. 2d 919 (C. A. 2, 1956), fol-

lowed by the District Court in the present case and in *Leotta v. S. S. Esparta*, 188 F. Supp. 168 (S. D. N. Y., 1960).

The opinion in *Grillea* first holds that the cause of action in rem and in personam is in substance identical (at page 921). The court then observes that the question of the validity of a maritime lien against a vessel without underlying personal liability of the shipowner is without known precedent (at page 924): "although as *res integra*, we see no reason why a person's property should never be liable unless he or someone else is liable 'in personam'."

Judge Learned Hand indicated an alteration of this viewpoint four years later in *Latus v. United States*, 277 F. 2d 264, 267 (C. A. 2, 1960), where he said:

> "We can find no decision in which such a lien has been imposed on a ship for the fault of another person than the owner, when that fault is not that of a 'bare-boat' charterer, or of some specified class of persons like a compulsory pilot."

In *Pichirilo v. Guzman*, 290 F. 2d 812, 815 (C. A. 1, 1961), the First Circuit refused to follow *Grillea*, pointing out that the comment of Judge Hand was unsupported by authorities, and was indeed contrary to other statements he had made on the same subject.

The First Circuit in *Pichirilo* concluded that a longshoreman, employed by a demisee, had no right of action against either the shipowner or his own employer and consequently could not assert a maritime lien against the vessel. The First Circuit thereby placed itself squarely in accord with the Third Circuit in the present case. However, this Court in *Guzman v. Pichirilo*, 369 U. S. 698 (1962), found that there was no demise, and reversed on that ground. In the dissenting opinion, at pages 703 and 704, Mr. Justice Harlan stated that the reversal had been decided on questions of fact, but that on the law questions which this Court did not decide the Court below was "plainly correct."

Under Judge Hand's decision in *Latus, supra,* and the relevant conclusions of law by the First Circuit in *Pichirilo, supra,* both of which were subsequent to *Grillea,* there is no conflict between the circuits, and the cited prior decisions of this Court have no bearing on the main issue presented by this petition.

II. The Court Below Was Correct in Holding That a Maritime Lien Depends Upon Some Underlying Personal Obligation of the Shipowner or Other Person Responsible for Operation of the Ship.

The purpose of a maritime lien is justice and convenience to an injured party, whereby he may assert what is in substance a claim against the shipowner or other person responsible for the ship. In *The Anaces,* 93 Fed. 240, 244 (C. A. 4, 1899), the court said:

> "The owners of the vessel almost invariably are unknown and inaccessible. To require the libelant to serve process on them is practically to deny him any remedy. Under the statutes of the United States, the owners of all vessel property, foreign and domestic, are given, to the fullest extent, the privilege of limiting their liability to the value of their interest in the vessel. The injured party cannot touch their property, outside of their interest in the ship, if they claim to limit their liability; and there are strong reasons of justice and convenience why he should have a maritime lien upon that specific property, and why distinctions, not founded in reason, between claims of the same general merit, should not gain a place in a system of jurisprudence which is intended to approach natural justice."

Personification of the ship does not assume that the ship itself has authority to warrant its own seaworthiness independently of her owner or demisee. It is a well-accepted principle of maritime law that a shipowner gives

an implied warranty of seaworthiness to the crew hired to navigate the vessel, and, under later extension of this doctrine, to longshoremen and others carrying out the traditional work of the crew in loading and unloading cargo. No case, however, holds that a ship in its own right makes a separate warranty of seaworthiness, so that the injured party has two separate and distinct causes of action, one arising against the ship and the other against her owner.

Nor does personification compel courts to adopt the sophistry that arrest of the ship on a libel in rem has no relation to the interest of her owner. The ship is the owner's property. Use of the ship in trade is the only justification for ownership of a cargo vessel. When she is arrested, her owner's property is seized and his expectable profits are suspended or lost. The owner's property rights in the *res* and the earnings therefrom cannot be justly infringed without some alleged breach of duty on his part. Seizure of the vessel without such claim amounts to forfeiture.

This Court has held that a proceeding in rem is "a proceeding against the owner of the property as well as against the goods; for it is his breach of the laws which has to be proved to establish the forfeiture, and it is his property which is sought to be forfeited." *Boyd v. United States*, 116 U. S. 616, 637 (1886).

No breach of duty can be asserted against the shipowner in the present case. The record is clear that the cause of petitioner's injury was a defective wooden pallet owned, used, and brought on board the ship by the demisee who was acting as his own stevedore to load the cargo. Nothing connected with the YAKA when she was delivered under the demise charter caused or contributed to the accident.

There is no authority for petitioner's contention that the shipowner remains liable for any unseaworthy condition arising during the demise, such as may be created by

the demisee's own equipment used in his business. The District Court ruled in the petitioner's personal action against Waterman that the owner's obligation to furnish a seaworthy vessel did not extend to conditions created by the bareboat charterer, citing *Cannella v. Lykes Bros. S. S. Co.*, 174 F. 2d 794 (C. A. 2, 1949); *Grillea v. United States*, 229 F. 2d 687 (C. A. 2, 1956); and *Grillea v. United States*, 232 F. 2d 919 (C. A. 2, 1956). The Court below in this case (see Opinion annexed to Petition, page 21) cited and followed the first *Grillea* decision, 229 F. 2d at 690, stating:

> "To that court it seemed neither fair to the demisor nor necessary to protect those who should deal with the ship during the term of the charter that this type of liability without fault should 'extend beyond the demisee, on whose initiative and for whose profit the venture had been undertaken * * * (to) include the demisor, who had done no more than put the demisee into possession of the ship.' "

The demise charterer takes over possession, command and navigation of the vessel; his position is "tantamount to, though just short of, an outright transfer of ownership." *Guzman v. Pichirilo, supra*, at page 700. In the present case, unlike *Guzman v. Pichirilo*, there was definitely a demise and the petitioner does not raise that issue.

Should the demise not relieve the shipowner from his responsibility for unseaworthy conditions created by the charterer, the owner would become liable for accidents arising under conditions over which he had no control, anywhere in the world, and for long periods of time after the owner last had possession. The shipping industry should not be burdened with such extraordinary risks.

In the absence of personal liability of the owner, in rem attachments have been refused. Instances include vessels in custody of the law: *New York Dock Co. v. S. S. Poznan*, 274 U. S. 117 (1927); where the owner is a sovereign power: *The Western Maid*, 257 U. S. 419 (1922); and where the owner's liability was barred by statute: *Consumers Import*

Co. v. Kabushiki Kaisha, 320 U. S. 249 (1943). In the last-named case, this Court quoted from *The City of Norwich*, 118 U. S. 468 (1886), at page 502:

> "To say that an owner is not liable, but that his vessel is liable, seems to us like talking in riddles."

Following this quotation, the Court commented (320 U. S. at page 253) that: "The riddle after more than half a century repeated to us in different context does not appear to us to have improved with age." This case expressly overruled *The Etna Maru*, 33 F. 2d 232 (C. A. 5, 1929), which held that the ship could be liable in rem regardless of the liability of her owner.

Petitioner's contention that the shipowner's warranty of seaworthiness is absolute and non-delegable even while the ship is demised concedes that a maritime lien is predicated upon the personal obligation of the owner, as the foregoing cases held.

Since there is no doubt that the accident was caused by equipment of the demisee, the shipowner has no personal responsibility; and the responsibility of the demisee as the employer of the longshoreman is barred by the provisions of the Longshoremen's and Harbor Workers' Compensation Act. Consequently, petitioner has no basis for a maritime lien which would support an action in rem against Steamship YAKA, and he may resort to his adequate statutory benefits under the Longshoremen's Act.

CONCLUSION.

The Court below was correct in deciding that petitioner had no underlying personal obligation involving either the shipowner or the demise charterer which would create a maritime lien against the demised vessel. Without a maritime lien, the vessel cannot be sued in rem or made independently responsible in damages for the alleged tort.

There are no contrary rulings in prior decisions of this Court. Many decisions, above cited, support the requirement of a personal obligation of the owner. The contrary conclusion of Judge Hand in the second *Grillea* decision in 1956 is contradicted by his later ruling in *Latus* in 1960; and the First Circuit, which is in accord with the Court below in this case, was not overruled by this Court in *Guzman v. Pichirilo*, which was reversed on other grounds.

Fictional personification of the ship is essentially a procedural device to serve the ends of justice and convenience. It does not create a legal entity which can warrant seaworthiness or commit torts. The petition should therefore be dismissed.

Respectfully submitted,

THOMAS F. MOUNT,
HARRISON G. KILDARE,
Counsel for Respondent,
Steamship YAKA.